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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)
)
Petition for Declaratory Ruling and)
Request for Expedited Action on)
July 15, 1997 Order of the Pennsylvania)
Public Utility Commission Regarding)
Area Codes 412, 610, 215 and 717)
)
)
Implementation of the Local Competition)
Provisions of the Telecommunications)
Act of 1996)
)
)
TO THE COMMISSION)

NSD File No. L-97-42

CC Docket No. 96-98

**INDIANA UTILITY REGULATORY COMMISSION'S
PETITION FOR ADDITIONAL DELEGATED AUTHORITY
TO IMPLEMENT NUMBER CONSERVATION MEASURES**

The Indiana Utility Regulatory Commission (IURC) submits to the Federal Communications Commission (FCC) this petition for additional delegated authority pertaining to number conservation measures. Pursuant to paragraphs 30 and 31 of the FCC's September 28, 1998, Memorandum Opinion and Order and Order on Reconsideration in NSD File No. L-97-42,¹ the IURC requests authority to implement various number conservation measures. The measures for which the IURC seeks authority would conserve numbers, thereby slowing the pace of area code relief, without having anticompetitive consequences or favoring one segment of the industry over

¹ Petition for Declaratory Ruling and Request for Expedited Action on July 15, 1997 Order of the Pennsylvania Public Utility Commission Regarding Area Codes 412, 610, 215 and 717.

another. They would also help protect Indiana against the disruption as well as the economic and social costs of new area codes.

Specifically, the IURC respectfully requests that the FCC grant it the authority to:

1. enforce current standards or enforce new standards, for number allocation, or to establish and enforce new standards;
2. order efficient number use practices within NXX codes;
3. order the return of unused and reserved NXX codes (and 1000 blocks if number pooling is implemented);
4. order number utilization and forecasting reporting, and audit such reporting;
5. order unassigned number porting;
6. order additional rationing measures; and
7. implement mandatory 1000 block number pooling.

BACKGROUND

Indiana first underwent the painful process of area code relief in 1997 with the geographic split of its 317 Numbering Plan Area (NPA), a portion of which became the new 765 NPA. At the time it was implemented, the 765 NPA was projected to last 14 years. Two years later the 219 NPA, which covers the northern one-third of the state, has been declared in jeopardy and is projected to exhaust in the first quarter of 2001. Furthermore, the 765 NPA, while not currently declared in jeopardy, is projected to exhaust six months after the 219 NPA, or just four years after its origination. If that were not enough, the 317 NPA is on course to again run out of NXX codes in the third quarter

of 2002. Indiana is clearly experiencing a numbering crisis as demonstrated by the need for perpetual area code relief.

Recently the IURC initiated a general investigation into numbering, in the hopes of uncovering the underlying cause(s) for the rapid depletion of numbering resources in Indiana.² To avoid the unnecessary allocation of new numbering resources through continual area code relief, the IURC may need additional authority to prescribe and apply number conservation measures to address the findings of our investigation. Although it may be too late to avoid area code relief in the 219 NPA, the additional authority requested in this petition might allow Indiana to more adequately address the numbering utilization in its other NPAs, and delay further disruptive area code relief.

Both the 317 and 765 NPAs have some time left in their projected life expectancies. It is widely recognized that the implementation of number conservation efforts such as 1000 block pooling have the potential for greatest impact if implemented before an NPA is in exhaust. If the IURC is granted the authority to implement number conservation methods, it will be positioned to help check the flow of a precious national resource, as well as save Indiana's citizens and telecommunications companies from the ordeal and expense of repeated area code relief measures.³

² Cause No. 41535, In Re: The Matter of an Investigation Initiated on the Commission's Own Order Regarding Projected Exhaustion of Allocable Telephone Numbers Within the Various Numbering Plan Areas (NPAs), Throughout the State of Indiana, September 9, 1999.

³ The IURC is not seeking FCC authority to pursue rate center consolidation, because we believe that this is an intrastate matter. In its recent Notice of Proposed Rulemaking CC Docket No. 99-200, In the Matter of Numbering Resource Optimization, the FCC reiterated its position that states do not require delegation of any additional authority to order rate center consolidation (par. 117).

AUTHORITY REQUESTED

The IURC requests the authority to undertake all or some of a variety of number conservation measures as may be determined from our investigation to be necessary. These measures have the potential to conserve numbers without anticompetitive consequences and without favoring one type of provider or technology over another. The IURC is aware of and involved in efforts to develop national number conservation guidelines and does not wish to undermine those efforts.⁴ Indeed, the IURC is mindful of the fact that any Indiana number conservation measures may have to be modified as national guidelines are developed. However, much of the authority that the IURC seeks merely involves strict enforcement of existing national industry guidelines. Additionally, as measures are developed in Indiana, care will be taken to minimize differences from what is being considered on a national level, so that Indiana can transition easily to the national approach once it emerges. Finally, while agreeing that national guidelines in this area are optimal, the IURC is keenly aware of the need to act quickly to avoid the escalation of area code difficulties already being experienced in Indiana, and the explosion of those which loom on the horizon. We are further of the opinion that states should have a strong role in numbering even when national guidelines are put in place.

Details concerning the number conservation methods that the IURC requests authority to implement follow.

⁴ *In the Matter of Numbering Resource Optimization*, CC Docket No. 99-200.

Authority to enforce current standards for number allocation or to set and enforce new standards and to order the return of unused and reserved exchange codes

Although guidelines for the allocation of NXX codes have been established, the code administrator (Lockheed Martin, the North American Numbering Plan Administrator) has little or no authority to enforce the requirements contained therein. The system was set up to be self-enforcing; companies were to certify that they meet certain requirements, but no efforts were made to verify those representations. Although the code administrator has begun taking some steps in this direction, it still has little or no authority and no efficient enforcement system. The IURC seeks authority, at a minimum, to enforce the standards already in the guidelines such as the requirement that the requesting company be certified to provide service in the area and that a forecasted need for the new NXX code is demonstrated in a months-to-exhaust report. The IURC seeks and would prefer the broader authority to set and enforce additional standards, such as a fill rate that must be met before a growth NXX code can be granted and demonstration of readiness to provide service before an initial NXX code can be awarded. Such authority could facilitate the return of precious NXX codes or block of numbers to the code or pooling administrator if the standards were not met.

Similarly, the IURC seeks authority, at a minimum, to order the return of initial and growth NXX codes if they are not activated in accordance with the existing guidelines. The IURC seeks and would prefer the broader authority to set and enforce additional standards, such as requiring that in order for a company to retain a newly obtained NXX code, it must not only be “activated” within six months but numbers must actually have been assigned to end users within that time.

Finally, the IURC seeks authority to order the return of reserved and protected NXX codes, if it becomes necessary and can be achieved without causing disruption to network operations, as determined from our investigation.

Authority to order efficient number use practices within NXX codes

The IURC seeks the authority to order sequential use of numbers within an NXX code or 1000 block of numbers. This will help preserve blocks of numbers for eventual pooling, whether under an Indiana pooling measure or a national pooling plan.

Authority to order number utilization and forecast reporting, and to audit such reporting

The IURC seeks authority to order number utilization and forecast reporting by all providers so that it can monitor usage and enforce numbering standards.⁵ Such reports have the potential to be more useful than the existing months-to-exhaust worksheet, as they include both historical and forward-looking data. This information could also contribute to a more accurate analysis of need projections. Furthermore, it could be used to help establish a database of information for use in the development and evaluation of needs-based number assignment standards.

The IURC also seeks authority to audit or oversee the audit of these reports to help ensure compliance with number assignment and utilization requirements.

⁵ The IURC already has broad authority under state law (IC 8-1-2-52) to request information from public utilities, and it is executing this authority in its current generic investigation into numbering. The requested delegated authority would merely enhance this authority.

Authority to order unassigned number porting

The IURC seeks authority to order unassigned number porting. This measure would allow a company that needs numbers in a small exchange where an NXX code has already been assigned to port numbers for its own use from the existing NXX code. This could be accomplished between the providers involved or through the use of a neutral third party. This measure has the dual benefit of not allocating another entire NXX code for that small exchange, and of optimizing the utilization of numbers in the small exchange by utilizing some of the unused numbers in the existing NXX code.

Authority to order additional rationing measures

The IURC seeks authority to order rationing as an area code nears jeopardy. The IURC would strive for consensus with and among the industry as to the rationing process, but this authority could allow for more rapid implementation of rationing than under current guideline, possibly delaying the need for area code relief.

The IURC also seeks authority to order the continuation of a rationing plan for six months following the implementation of area code relief so that, for example, a “run” on the existing area code could be prevented if an overlay is ordered as the method of area code relief.

Authority to implement mandatory 1000 block number pooling

The IURC seeks the authority to implement 1000 block number pooling. The IURC believes that 1000 block number pooling holds great potential as a long-term number conservation method. Although such measures are only possible in exchanges

where local number portability (LNP) has been deployed, the presence of LNP is often indicative of the presence of competition and the need it brings for NXX code assignments.

The North American Numbering Council (NANC) believes that 1000 block pooling can be implemented 10 to 19 months after an order is issued.⁶ Many of the difficulties associated with pooling have been resolved by the emergence of industry guidelines.⁷ The IURC recognizes the potential of these guidelines as a starting point for development, with the industry, of a number pooling plan in Indiana. Among other things, such an approach could reduce the differences between any Indiana pooling plan and a national pooling plan, should one be approved.

CONCLUSION

It is apparent that Indiana has numbering problems. The existing mechanisms currently available to Indiana for coping with such problems may not be adequate. While IURC has begun an investigation into the causes of Indiana's numbering difficulties, it desires to begin the process of obtaining additional authority, as may be necessary to adequately address the problem. Therefore, the IURC respectfully requests that the FCC grant this Petition for Additional Authority pertaining to number conservation measures in order that the IURC can respond quickly and appropriately at the conclusion of our investigation. Through a more efficient use of number resources, Indiana


⁶ Number Resource Optimization Working Group Modified Report to the North American Numbering Council on Number Optimization Methods, released October 21, 1998.

⁷ Industry Numbering Committee, Thousand Block (NXX-X) Pooling Administration Guidelines (January 27, 1999).

communications consumers and companies might be spared the ordeal and expense of repeated area code relief. By exercising the additional authority where prudent, Indiana can do its part to preserve the dwindling national resources of area codes and telephone numbers and still encourage competition in the telecommunications industry.

Respectfully Submitted

By:

 *
Nikki Shoultz
General Counsel

***As authorized by the Indiana Regulatory Commission in Cause No. 41535.
Order attached.**

REB
for
WOW

STATE OF INDIANA
ORIGINAL

INDIANA UTILITY REGULATORY COMMISSION

IN RE: THE MATTER OF AN INVESTIGATION)
INITIATED ON THE COMMISSION'S OWN)
ORDER REGARDING PROJECTED)
EXHAUSTION OF LOCABLE)
TELEPHONE NUMBERS WITHIN THE)
VARIOUS NUMBERING PLAN AREAS)
(NPAs), THROUGHOUT THE STATE OF)
INDIANA)

CAUSE NO. 41535

APPROVED:

SEP 6 1996

BY THE COMMISSION:

Thomas Cobb, Administrative Law Judge

On November 13, 1996, this Commission issued its Order in the Matter of 317 NPA Relief Plan, under Cause No. 40525. That particular Order, in a matter of first impression, related only to the then-anticipated exhaustion of allocable telephone numbers within the 317 Numbering Plan Area (NPA). The resolution to the pending problem resolved by that Order, entailed the shrinking of the size of the 317 area code territory and the creation of a new area code, number 765, for those areas formerly within the old 317 area, but outside the new 317 boundary.

It has now become apparent to the Commission that the State's problems with projected exhaustion of allocable telephone numbers are not restricted to the 317 NPA, but loom statewide to varying degrees among all existing area code territories. The area of most immediate concern in the state is the 219 area, which area should receive the initial focus of this investigation. However, subsequently, it will be necessary to study and review the numbering potential of the remaining area codes within the state.

It is clear that the problem of available telephone numbers is not unique to the State of Indiana. State commissions from California to Maine are beginning to address this issue. The Federal Communications Commission, ("FCC"), is likewise reviewing its rules and procedures with regard to the growing problem of number availability.

To a great degree, it is the success of the telephone communications industry and the recent explosion in technology and available devices, cellular phones, pagers, and other wired and unwired telephonic services, all of which require numerical identification, that has led to this problem. It is incumbent on this Commission, as it is the commissions of other states, to anticipate such problems when possible and to address them in a reasonable and informed way. This investigation seeks to do this.

It is clear that the investigation will require the Commission's staff to issue one or more requests for data. In order that such data requests may be openly and completely

answered, the Commission will instruct the presiding officer to grant a preliminary entry of confidentiality with regard to such responses and to, thereafter, hold a hearing to determine whether or not such preliminary entry should be made permanent, pursuant to I.C. 8-1-2-29, with regard to such responses

Due to the still-pervasive role of the FCC within this area of investigation, it will be necessary for this Commission to petition the FCC requesting broad authority to implement any number conservation measures in Indiana, including number pooling, technology-specific overlays, or other solutions as may be dictated by this investigation. It will be the role of the Commission staff to draft such petition, to be filed by the Commission upon its review and approval.

The Commission finds that it is in the public interest that this investigation proceed as to all area codes within the state, with initial focus on the 219 area, that the staff prepare and distribute a data request, and that the responses to such request be granted preliminary confidentiality. It is also determined that the staff ought to prepare a petition to the FCC requesting broad authority to implement, in a manner determined by this Commission to be in the public interest, such measures as may be necessary or indicated as a result of this investigation.

At the conclusion of this investigation, if sufficient grounds are found to exist, the Commission directs the presiding officer to schedule a formal hearing under this Cause, pursuant to I.C. 8-1-2-59, to consider those measures indicated by this investigation. All telephone companies certified to do business in the State of Indiana, and the Office of the Utility Consumer Counselor, shall receive notice of such hearing as interested parties.

Being sufficiently advised in the premises, the Commission now finds:

1. Commission Jurisdiction. With regard to the Commission's Petition to the Federal Communications Commission for broad authority to implement any number conservation or NPA plan in Indiana, the FCC has agreed that state commissions may take the lead on these matters with the expectation that their findings will be implemented following proper petition to and authority from the Federal Communications Commission.

Section 251(e) of Telecommunications Act of 1996 (TA 96) states that "(n)othing in this paragraph shall preclude the [FCC] from delegating to state commissions or other entities all or any portion of such jurisdiction." In its Second Report and Order and Memorandum Opinion and Order, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, CC Docket No. 96-98, FCC 96-333, adopted and released August 8, 1996 ("Second Report and Order"), while retaining its authority to set policy with respect to all facets of number administration in the United States, the FCC addressed the role of state public utility commissions in numbering administration and authorized states to resolve matters involving the implementation of new area codes. Second Report and Order ¶¶ 271-272. In discussing the role of state

commissions, the FCC noted that state commissions are "uniquely positioned to understand local conditions and what effect new area codes will have on such conditions," and made such authorization effective immediately. *Id.* ¶272. Further, I.C. 8-1-2-58 grants this Commission broad authority to investigate any matter relating to any public utility. The relevant portion of I.C. 8-1-2-58 reads as follows:

"Whenever the commission shall believe that ... an investigation of any matters relating to any public utility should for any reason be made, it may, on its motion, summarily investigate the same, with or without notice."

Although I.C. 8-1-2 et seq. requires no finding or explanation by the Commission for the Commission's commencement of such investigations, we find that the broad description above sets forth sufficient information of the potential for inadequate or unavailable service that a Commission investigation is warranted. A reasonable reading of this statute clearly confers the jurisdiction required for the investigation of the area code regulatory scheme before us. Indeed, the Indiana Court of Appeals has stated:

The legislature has explicitly given the IURC the authority, upon its own motion, I.C. 8-1-2-58, or when the issue is otherwise properly presented to it, to investigate into the "service" provided by a regulated utility, to find facts based upon the evidence before it, and to prospectively rectify any perceived inadequacies in the utility's practices or the regulatory scheme. I.C. 8-1-2-54, 69: Inherent in this grant of power is the implicit power and authority to do that which is necessary to effectuate the regulatory scheme. *South Eastern Ind. Natural Gas v. Ingram* (1993) 617 N.E.2d 943, 949, citing *Northern Indiana Public Service Co. v. Citizens Action Coalition* (1989), *Ind.*, 548 N.E.2d 153, 158, cert. Denied, 476 U.S. 1137, 106 S.Ct. 2239, 90 L.Ed.2d 687.

Indiana Code 8-1-2-59 continues this process by giving this Commission the authority to proceed with formal hearings, upon notice, regarding matters so investigated.

Pursuant to the state and federal authorities described above, the Commission finds that it has jurisdiction over the parties and subject matter of this proceeding.

IT IS THEREFORE ORDERED BY THE INDIANA UTILITY REGULATORY COMMISSION that:

1. An investigation shall be, and hereby is, commenced into the generic issue of the projected exhaustion of allocable telephone numbers within the various numbering plan areas (NPAs) within the State of Indiana, with initial focus to be upon the present and projected status of the 219 NPA.

2. The Commission staff is directed to draft a petition to the Federal Communications Commission requesting such broad authority as may be necessary to implement number conservation measures in Indiana, including, but not limited to, number pooling, technology-specific overlays, or such other resolutions as the Commission shall determine to be reasonable and necessary to the welfare of the State of Indiana.

3. The Commission staff is directed to prepare and distribute a data request requiring such information as may be necessary for the expeditious conduct of this investigation. The Commission further finds that the responses to such data requests shall be deemed preliminarily confidential and that the presiding officer shall, thereafter, hold a properly scheduled hearing to determine whether such confidentiality ought be made permanent with regard to these responses.

4. Following this investigation, if sufficient grounds are found to exist, the presiding officer is directed to schedule and notice a formal hearing pursuant to I.C. 8-1-2-59, to consider the matters raised by this investigation.

5. This Order shall be effective on and after the date of its approval.

McCARTY, RIPLEY, SWANSON-HULL AND ZIEGNER CONCUR; KLEIN ABSENT:
APPROVED:

SEP 09 1999

**I hereby certify that the above is a true
and correct copy of the Order as approved.**



Joseph M. Sutherland
Secretary to the Commission